

IN THE MATTER OF GRANTING A) ORDER #7023
WATER QUALITY) Corps Reference No. NWS-2009-601-SO
CERTIFICATION TO) Expansion of the berthing area, removal and
Port of Grays Harbor) building of structures and dredging of the
in accordance with 33 U.S.C. 1341) Terminal 1 berthing area in the amount of
(FWPCA § 401), RCW 90.48.120, RCW) 336,000 cubic yards (cy) over a period of 10
90.48.260 and Chapter 173-201A WAC) years in Hoquiam, Grays Harbor County,
Washington

TO: Mr. Gary Nelson
Port of Grays Harbor
P.O. Box 660
Aberdeen WA 98520-0141

On June 11, 2009 the Port of Grays Harbor submitted a revised Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on July 1, 2009.

The proposed work consists of expanding the existing berthing area of Terminal 1 operated by the Port of Grays Harbor. The work includes demolition and removal of some of the existing inwater structures at Terminal 1; repair of existing structures to remain; initial dredging and disposal activities; constructing new pier structures and dolphins; followed by annual maintenance dredging over a 9-year period. The permit would be valid for a period of 10 years. A brief description of each work activity is provided below:

- **Removal of Existing Structures:** Existing catwalks and support pilings; a portion of the existing dock and its support pilings, existing creosote-treated pilings that are not being used; and privately-operated fish rearing pens would be removed. Up to 287 creosote-treated piling averaging 13-inches in diameter would be removed. All materials would be disposed of at appropriate upland disposal facilities.
- **Repair of Existing Trestle, Dock, Gangway and Floats:** The second phase of the project would entail repairs to existing structures to remain as part of the enhanced facility. This would include above-water timber replacement of various structure members along the dock and trestle; installation of four 12 to 14-inch ACZA treated batter piles for structural stability; and replacement of a creosote-treated pile with an 18-inch ACZA-treated timber pile along the small craft float.
- **Initial Dredging and Disposal:** Initial dredging of up to 66,000 cubic yards of sediment would occur over a 6.0 acre area to enlarge and deepen the existing berthing area. The current Terminal 1 berthing area is 682-feet in length by 110-feet wide with a maximum depth of 32.0 feet below mean lower low water (MLLW). The proposed berthing area would be 1,050-feet in length by 200-feet wide with a maximum depth of -43.0 feet below MLLW over 6 acres. The initial

dredging would be accomplished using a clamshell dredge and split-hull bottom dump barge with open water disposal at either the Point Chehalis or South Jetty disposal sites.

- **New Structures:** The final phase of construction is to add to and extend the existing inwater structures. This would include a "L" shaped center platform at the end of the existing dock (24 x 24-feet in size) and an attached 60 x 25-foot section of dock; two new breasting dolphins; up to four mooring dolphins; two aluminum catwalks; and four fender units. This work would require driving up to 97 24-inch steel piles; four 18-inch steel piles; up to 16 30-inch steel piles; and five AZCA treated timber piles ranging from 12 to 18-inches in diameter. The proposed pier structures would extend up to 50-feet further waterward than the existing structures.

- **Annual Maintenance Dredging:** Following initial dredging in the first year, maintenance dredging would be conducted on an annual basis for a period of 9 years, with up to 30,000 cubic yards of sediment dredged per year over a 4.4-acre area for a total of 270,000 cubic yards of maintenance dredging. The annual maintenance dredging would be also accomplished using a clamshell dredge and split-hull bottom dump barge with open water disposal at either the Point Chehalis or South Jetty disposal sites.

PURPOSE: The purpose of the proposed Terminal 1 dredging is to enlarge and deepen the berthing area and pier modifications to accommodate Panamax size vessels for existing tenants and reduce congestion at the neighboring Terminal 2. The Terminal 1 tenants include an existing biodiesel facility (Imperium Renewables) and a bulk liquids transfer facility (Westway Terminals) which is under construction.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the Port of Grays Harbor and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal permit coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #7023 and Corps Reference # NWS-2009-601-SO.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Protection Application (JARPA) received by Ecology on June 11, 2009. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
6. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified or if additional conditions are necessary to further protect water quality.
8. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
10. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Water Quality Conditions:

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A, except as otherwise authorized by this Order.

C. Turbidity Mixing Zone:

1. Consistent with WAC 173-201A-400, this Order authorizes a mixing zone for turbidity as follows:
 - i. The distance granted for the temporary turbidity mixing zone is a 600 foot radius from the in-water activity.
 - ii. Visible turbidity anywhere at the 600 ft point of compliance from the activity and/or the disposal location shall be considered to be an exceedance of the standard.
 - iii. The mixing zone is only authorized during the work window identified in the most current HPA issued for this project.

D. Water Quality Monitoring:

1. The Applicant shall submit a water quality monitoring plan to Ecology per Condition A2 at least 14 days prior to dredging. This plan shall be approved by Ecology prior to any in-water work. The plan shall include at a minimum the following information:
 - a. Name and contact information of the person or firm responsible for monitoring;
 - b. Map of sample locations including background, 150 feet, 300 feet and point of compliance at or near the surface, midway, and bottom depths. For this project the point of compliance is a radius of 600 feet from the activity causing the turbidity exceedance.
 - c. Parameter to be monitored: turbidity;
 - d. Sample method;
 - e. Frequency, and
 - f. Steps to be taken if monitoring results indicate an exceedance has occurred.
2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator. The permit coordinator shall be contacted within 24 hours if an exceedance occurs.

E. Dredging and Disposal:

1. All dredging is to be done using a clamshell bucket dredge. Use of any other type of dredge will require prior approval from Ecology.
2. All dredged material will be transported to the Point Chehalis or South Jetty open water disposal sites.
3. All debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed.
4. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into waters of the State.
5. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
7. A pre-dredge meeting is required to be convened at the Seattle Corps of Engineers office prior to the start of dredging. A **Dredging Plan** is required and shall be made available for review and approval 2 weeks prior to the pre-construction meeting. A copy of the

plan shall be sent to the 401/CZM Federal permit coordinator at the address shown in Condition A2.

8. Prior to each dredging cycle, the Applicant shall contact the PSDDA agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued. This area ranks moderate in potential for contamination and the recency determination extends until February 10, 2014. Contact the DMMO for a possible extension of up to 2 years.

F. Conditions for Construction Activities:

General Conditions:

1. Construction stormwater, sediment, and erosion control best management practices (BMPs: e.g. geotextile fencing, drain filtration, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
2. Sediment and erosion control measures shall be inspected and maintained during construction.
3. Construction debris shall be stored upland of the ordinary high water mark so that it cannot enter the water or cause water quality degradation. All debris shall be properly disposed of on land.
4. Wash water containing oils, grease, sediment, or other hazardous materials resulting from washdown of equipment or working areas shall be contained for proper disposal and shall not be discharged into state waters or storm drains.

Work in Marine Waters:

5. During project demolition or construction a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of construction activities. All accumulated debris shall be stored upland and disposed of at an approved site.
6. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent sawdust and other materials from entering the water.

Piling Removal and Installation of New Piling:

7. In the event that pilings break off during extraction, the remaining piling may be removed by using a chain or a compressed air or hydraulically-operated saw.

8. The work surface on the barge deck or upland shall include a containment basin for piles and any debris removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment. Accumulated wastewater from any storage area shall be treated prior to discharge.
9. All piling removed shall be disposed of at an approved upland disposal site. If the pilings cannot be removed completely, they shall be cut off at a minimum of two (2) feet below grade.
10. The piling should be removed immediately from the water onto the barge or uplands. The pile shall not be shaken, hosed off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
11. All new pilings shall be steel or ACZA treated wood.
12. The Applicant shall employ a bubble curtain during installation of piles greater than 10 inches in diameter when using an impact hammer. The bubble curtain shall be deployed in a manner to ensure that bubbles completely engulf the piles during the impact driving. A block of wood at least six (6) inches thick shall be placed between the pile driver and the pile to minimize in-water noise.

G. Timing Requirements:

1. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of 10 years from date of issuance. Continuing this project beyond the 10 year term of this Order will require separate certifications every 10 years.

H. Notification Requirements:

1. The Applicant shall provide notice to Ecology's 401/CZM Federal permit coordinator at least 7 days prior to the start of any inwater construction and dredging each year and within 14 days after completion of construction or dredging that year. Notification should be made using all the information required in Condition A2.

I. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6076.
 - f. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

J. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001 (2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Shorelands and Environmental Assistance Program
Attn: Helen Pressley
P.O. Box 47600
Olympia WA 98504-7600

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

*Order #7023, Corps No. NWS-2009-601-SO
Port of Grays Harbor Terminal 1
October 23, 2009
Page 10 of 10*

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED 10/23/2009 at Olympia, Washington.



Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office – Ecology
State of Washington